IN THE HIGH COURT OF PUNJAB & HARYANA CHANDIGARH

Criminal Appeal No.1993-SB OF 2005
Date of Decision: JULY 23, 2007

SUKHDEV SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

Criminal Appeal No.2027-SB OF 2005
Date of Decision: JULY 23, 2007

BANT SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

Present: None for the appellants.

Mr. Anter Singh Brar, DAG, Punjab.

A.N.JINDAL, J

This judgment shall dispose of two criminal appeal Nos.1993-SB of 2005 and 2027-SB of 2005 having arisen out of the judgment dated 26.09.2005 passed by Special Court Bhatinda vide which out of the three accused Gopal Singh was acquitted whereas Bant Singh and Sukhdev Singh were convicted under Section 15 of NDPS Act and were

sentenced to under go RI for 10 years and to pay a fine of Rs.1 lakh each for keeping in their possession 3 gunny bags of poppy husk each bag containing 30 KG of poppy husk in the area of village Ghuman Khurd.

The allegations in brief are that on 15.05.2001 Balwinder Singh, S.H.O, Police Station, Maur alongwith other police party was holding a picket on the bridge of the canal minor in area of village Ghuman Kalan. At about 11.15AM, the accused Bant Singh while driving the car and also accompanied by Sukhdev Singh and Gopal Singh came from the opposite side. The accused Sukhdev Singh and Bant Singh were nabbed whereas Gopal Singh fled away from the spot. On suspicion the car was stopped and searched. Three gunny bags containing poppy husk were recovered. On completion of all the formalities, challan against all the three accused was presented in the Court. The trial resulted into acquittal of the accused Gopal Singh and conviction of two others. Hence this appeal.

The records, transpire that the prosecution has been able to establish the case against both the accused beyond reasonable doubt. The consistent testimony of Inspector Balwinder Singh(PW1) and HC Sandhura Singh (PW2), DSP Raghbir Singh Chehal(Gazetted Officer summoned at the spot) establishes that prosecution had left no chance to doubt the prosecution version. Their testimonies an consistent inter se on all material points. That apart, Kaur Singh,ASI has proved all the documents i.e consent memo,

recovery memo, personal search memo, grounds of arrest memos and also chemical examiners report on the record.

Consequently, the judgment of conviction is maintained. Now coming to the quantum of sentence, it may be observed that there is no good evidence record to prove the actual weight of the poppy husk. No doubt, poppy husk was recovered from the accused but without the appropriate evidence regarding weighment, it cannot be definitely said that it was exactly 90 KG of poppy husk. From the order dated 08.02.2007 passed by this Court, it transpires that the accused have undergone about 6 years of substantive sentence.

Under these circumstances, it would be expedient in the interest of Justice not to maintain their further incarceration for this recovery of 90 KG of poppy husk particularly when the accused have left themselves to the mercy of the Court. Consequently, the appeals are dismissed with the modification that the sentence awarded against the accused is reduced to 6 years and a fine of Rs.5000/- each. On failure to make payment of fine they would further undergo RI for 3 months. The learned Chief Judicial Magistrate, Bhatinda is directed to take necessary steps to execute the remainder part of the sentence.

(A.N.JINDAL)
JUDGE

July 23,2007
Ruchika

To be referred to reporter: Yes/No